

CITY of BURIEN
Department of Community Development
Zoning Ordinance Interpretation # 97-04

Subject: Structures in the Setback

Purpose:

The purpose of this administrative interpretation is to provide guidelines to the consideration of structures in the setback area as noted in BMC 18.30.030.

Background:

Burien Municipal Code 17.35, which governs the short plat process, requires that a decision to approve a short plat is based on, among other criteria, conformance with the Burien Interim Zoning Code. The issue has come up whether a short plat may be approved if there are existing structures located within the required street setback as identified by BMC 18.30.030, footnote (15). This footnote states that for corner lots, the primary street setback is 20 feet and the secondary street setback is 15 feet from the property line. In this case, the existing house currently complies with the required 15 foot setback for a structure located on a corner parcel adjacent to a secondary street. However, an additional 10 feet of street right-of-way (ROW) must be dedicated to the City prior to final approval of this short plat. Dedication of the 10 feet of ROW will place the existing house 6 feet from the property line and therefore the parcel will not conform to the Burien Interim Zoning Code. Pertinent code sections are the definition of setback, which in part defines setback as “the area on a lot that is required to remain free of structures.” Section 18.30.030 goes on to specify setbacks within various zones and various situations, such as footnote 15 noted above.

The creation of a nonconforming lot due to the required dedication of right-of-way to the City is distinguished from a situation where the setback nonconformance already exists prior to the dedication of the additional right-of-way. This type of nonconformance, such as the garage nonconformance noted below, which already exists before the dedication of the right-of-way, is one that must be rectified prior to the approval of a land use application such as a short plat.

It should be noted that there is an existing garage that fronts on the secondary street but does not meet the requirement for the 20 foot setback for garages. The garage will be located four feet within the street right-of-way when the 10 additional feet are dedicated to the City. This structure is not permitted and must be removed prior to approval of the short plat.

Conclusion:

The creation of the nonconformance with the zoning code setback requirement is the result of a City imposed dedication requirement. The nonconformance is not the result of any action taken by the short plat applicant. As a result, it is the conclusion of this interpretation that the short plat complies with BMC 18.30.030 as it relates to secondary street setback requirement for the existing house. When the 10 feet of right-of-way is dedicated to the City, the existing house would become a legal nonconforming structure as to setbacks and should be treated as such under the zoning code.

Patrick L. Dugan
Community Development Director

12/30/97
Date

APPEAL NOTICE:

This decision shall be final unless a Notice of appeal is filed with the City Clerk within ten days of the date of this decision. The Notice of Appeal shall be accompanied by the appropriate appeal fee and shall be filed and processed in accordance with BMC 2.20.

DATE OF PUBLICATION: _____